



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9834-6]

[Docket ID Number EPA-HQ-OECA-2013-0170]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity to Comment Regarding T-Mobile US, Inc., Successor by Merger to MetroPCS Communications, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a Consent Agreement with T-Mobile US, Inc. (T-Mobile US), which formed following the merger of MetroPCS Communications, Inc. (MetroPCS) and T-Mobile USA, Inc. (T-Mobile USA), to resolve violations of the Clean Water Act (CWA), the Emergency Planning and Community Right-to-Know Act (EPCRA), the Clean Air Act (CAA), the Resource Conservation and Recovery Act (RCRA), and their implementing regulations.

The Administrator is hereby providing public notice of this Consent Agreement and proposed Final Order (CAFO), and providing an opportunity for interested persons to comment on the CWA, EPCRA, CAA and RCRA portions of the CAFO, pursuant to CWA Section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C). Upon closure of the public comment period, the CAFO and any public comments will be forwarded to the Agency's Environmental Appeals Board (EAB).

DATES: Comments are due on or before *[insert date 30 days after date of publication in the Federal Register]*.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2013-0170, by one of the following methods:

- www.regulations.gov: Follow the online instructions for submitting comments.
- Email: docket.oeca@epa.gov, Attention Docket ID No. EPA-HQ-OECA-2013-0170.
- Fax: (202) 566-9744, Attention Docket ID No. EPA-HQ-OECA-2013-0170.
- Mail: Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW, Washington, D.C., 20460, Attention Docket ID No. EPA-HQ-OECA-2013-0170.
- Hand Delivery: Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW, Washington, D.C. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OECA-2013-0170.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov. The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy at the Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW, Washington, D.C. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number

for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927.

FOR FURTHER INFORMATION CONTACT: Michael Calhoun, Special Litigation and Projects Division (2248-A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460; telephone: (202) 564-6031; fax: (202) 564-9001; and e-mail: calhoun.michael@epa.gov.

Background

This proposed settlement agreement is the result of voluntary disclosures of CWA, EPCRA, CAA, and RCRA violations by MetroPCS to the Special Litigation and Projects Division (SLPD) in the Office of Civil Enforcement. MetroPCS was a wireless telecommunications company that used Distributed Antenna System (DAS) network facilities to provide wider wireless coverage and increase indoor WiFi capacity where alternate technologies are infeasible due to terrain or zoning challenges for cell tower placement. T-Mobile US is a telecommunications company organized under the laws of the State of Delaware which formed as a result of the May 1, 2013 merger of MetroPCS and T-Mobile USA.

On December 31, 2009, EPA and MetroPCS entered into a corporate audit agreement pursuant to EPA's policy on *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (Audit Policy), 65 Fed. Reg. 19618 (Apr. 11, 2000), regarding 88 office buildings, warehouses, and DAS facilities located in 11 states (first phase). EPA and MetroPCS subsequently amended the audit agreement on November 4, 2010, to add to the audit 11,715 cell site facilities and two switch sites

located in 15 states (second phase). A final list of all disclosed and corrected violations is provided in Attachment A to the CAFO.

Proposed Settlement

EPA determined that MetroPCS' disclosures satisfied all the conditions set forth in the Audit Policy, and therefore qualify for a 100% reduction of the civil penalty's gravity component. Pursuant to the settlement agreement, EPA proposes to waive the gravity-based penalty. T-Mobile US has agreed to pay a civil penalty of \$16,913 for the violations identified in Attachment A. This figure is the calculated economic benefit of noncompliance based on information provided by MetroPCS and use of the Economic Benefit (BEN) computer model. Of this amount, \$11,441 is attributable to EPCRA violations, \$3,777 is attributable to CWA violations, \$1,543 is attributable to CAA violations, and \$152 is attributable to RCRA violations.

EPA and T-Mobile US negotiated the proposed Consent Agreement in accordance with the Consolidated Rules of Practice, 40 CFR Part 22, specifically 40 CFR 22.13(b) and 22.18(b) (In re: T-Mobile US, Inc., EPCRA-HQ-2013-8004; CWA-HQ-2013-8004; CAA-HQ-2013-8004; and RCRA-HQ-2013-8004). This Consent Agreement is subject to public notice and comment under Section 311(b)(6)(C) of the CWA, 33 U.S.C. 1321(b)(6)(C). The procedures by which the public may comment on a proposed CWA Class II penalty order, or participate in a Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is *[insert date 30 days from date of publication in the **Federal Register**]*. All comments will be transferred to the EAB for consideration. The EAB's powers and duties are outlined in 40 CFR 22.4(a).

Disclosed and Corrected Violations:**CWA**

MetroPCS violated CWA Section 311(j), 33 U.S.C. 1321(j), and the regulations found at 40 CFR Part 112, because it failed to prepare and implement Spill Prevention, Control, and Countermeasure (SPCC) Plans for two facilities identified in Attachment A (720 2nd St, Suite 1200, Oakland, CA 94607 and 2990 Gateway Drive, Suite 950, Norcross, GA 30071).

Under CWA Section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of CWA Section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA Section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to \$177,500 by EPA. Class II proceedings under CWA Section 311(b)(6) are conducted in accordance with 40 CFR Part 22. As authorized by CWA Section 311(b)(6), 33 U.S.C. 1321(b)(6), EPA has assessed a civil penalty for these violations.

Pursuant to CWA Section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

EPCRA

MetroPCS disclosed that it violated Sections 302(c) and 303(d) of EPCRA, 42 U.S.C. 11002(c) and 11003(d), and the implementing regulations found at 40 CFR Part 355, at 24 facilities listed in Attachment A when it failed to properly provide emergency planning notifications for these facilities. Such notification is mandatory when extremely

hazardous substances are present at a facility in an amount equal to or greater than the materials' threshold planning quantities. These violations constitute one-time violations.

MetroPCS violated Section 311(a) of EPCRA, 42 U.S.C. 11021(a), and the implementing regulations found at 40 CFR Part 370, at 24 facilities listed in Attachment A when it failed to submit a Material Safety Data Sheet(s) (MSDS) for a hazardous chemical(s) and/or an extremely hazardous substance(s) or, in the alternative, a list of such chemicals, to the local emergency planning committee (LEPC), the state emergency response commission (SERC), and the fire department with jurisdiction over these facilities. In addition, MetroPCS disclosed that it violated Section 312(a) of EPCRA, 42 U.S.C. 11022(a), and the regulations found at 40 CFR Part 370, at 24 facilities listed in Attachment A by failing to prepare and submit emergency and chemical inventory forms (Tier I or Tier II, as described in 40 CFR Part 370) to the LEPC, SERC, and the fire department with jurisdiction over these facilities.

Under EPCRA Section 325, 42 U.S.C. 11045, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right-to-know requirements, or any other requirement of EPCRA. Proceedings under EPCRA Section 325 are conducted in accordance with 40 CFR Part 22. EPA, as authorized by EPCRA Section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

CAA

MetroPCS violated the federally-approved New Jersey and Pennsylvania State Implementation Plan (SIP) requirements for failure to comply with recordkeeping and permitting requirements for its emergency generators at five facilities listed in

Attachment A. Section 110(a)(1) of the CAA, 42 U.S.C. 7410(a)(1), requires states to submit plans to implement, maintain, and enforce ambient air quality standards. Both the New Jersey and Pennsylvania SIPs include requirements approved by EPA under Section 110 of the CAA, 42 U.S.C. 7410. As detailed below, these provisions were incorporated into the respective SIPs and are therefore federally-enforceable.

At the time of the violations, the New Jersey SIP included a provision, N.J.A.C. 7:27 Section 19.11, stating that emergency generators are subject to specific on-site recordkeeping requirements, effective March 7, 2007. This provision was federally-approved on July 31, 2007, and became federally-enforceable on August 30, 2007 (72 Fed. Reg. 41626). MetroPCS owned or operated a facility in Pennsauken, New Jersey that failed to keep on-site operating records for its emergency generator in accordance with N.J.A.C. 7:27 Section 19.11.

At the time of the violations, the Pennsylvania SIP included a provision, City of Philadelphia Air Management Regulation I, Section II, stating that air contaminant sources must apply for an installation permit and operating license. This provision was federally-approved and became federally-enforceable on May 4, 1974 (40 Fed. Reg. 41787). MetroPCS owned or operated four (4) facilities in Philadelphia, Pennsylvania that failed to apply for an installation permit and operating license as required by the City of Philadelphia Air Management Regulation I, Section II.

MetroPCS violated the federally-approved SIP requirements which were approved by EPA pursuant to CAA Section 110, 42 U.S.C. 7410. MetroPCS is therefore subject to federal enforcement under CAA Section 113(d), 42 U.S.C. 7413(d). EPA, as authorized by CAA Section 113(d), 42 U.S.C. 7413(d), may assess a civil penalty for

these violations. Under CAA Section 113(d), 42 U.S.C. 7413(d), the Administrator may issue an administrative order assessing a civil penalty against any person who has violated an applicable requirement of the CAA, including any rule, order, waiver, permit or plan. Proceedings under CAA Section 113(d) are conducted in accordance with 40 CFR Part 22. EPA, as authorized by the CAA, has assessed a civil penalty for these violations.

RCRA

MetroPCS violated Section 3002 of RCRA, 42 U.S.C. 6922, and the regulations found at 40 CFR 273.13 – .15 (universal waste requirements for the storage, labeling, and inventory of lamps and batteries), and the federally-authorized state regulations at one facility in Florida (Fla. Admin. Code Ann. R. 62-730.185), one facility in Georgia (Section 391-3-11.18 of the Georgia Hazardous Waste Management Rules (GHWMR)), and one facility in New York (Title 6 of the New York Codes, Rules, and Regulations, Section 374-3.2), as identified in Attachment A. MetroPCS also disclosed that it violated Section 3002 of RCRA, 42 U.S.C. 6922, and the regulations found at 40 CFR 273.16, at one facility in Florida (Fla. Admin. Code Ann. R. 62-730.185) and one facility in Georgia (Section 391-3-11.18 of the GHWMR), by failing to train employees in proper identification and management of universal waste. Proceedings under RCRA Section 3008, 42 U.S.C. 6928, are conducted in accordance with 40 CFR Part 22. EPA, as authorized by RCRA Section 3008(g), 42 U.S.C. 6928(g), has assessed a civil penalty for these violations.

List of Subjects

Environmental Protection

Dated: June 21, 2013.

*Andrew R. Stewart, Acting Director,
Special Litigation and Projects Division,
Office of Civil Enforcement,
Office of Enforcement and Compliance Assurance.*

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